

CORRECTED
UNITED STATES COAST GUARD COURT OF CRIMINAL APPEALS
Washington, D.C.

UNITED STATES

v.

Kurt L. BOND
Fireman Apprentice (E-2), U.S. Coast Guard

CGCMG 0255

Docket No. 1314

16 March 2010

General Court-Martial convened by Commander, Maintenance and Logistics Command Atlantic.
Tried at Miami, Florida on 11 March 2008 and Norfolk, Virginia on 2 - 12 June 2008.

Military Judge:	CAPT Brian M. Judge, USCG
Trial Counsel:	LT Benedict S. Gullo, USCGR
	LT Kelly C. Blackburn, USCGR
Detailed Defense Counsel:	LCDR Andrea K. Lockhart, JAGC, USN
Individual Military Defense Counsel:	LCDR Marcus N. Fulton, JAGC, USN
Appellate Government Counsel:	LT Emily P. Reuter, USCG
	CDR Stephen P. McCleary, USCG
Appellate Defense Counsel:	CDR Necia L. Chambliss, USCGR
	LCDR Rachael B. Bralliar, USCGR

BEFORE
McCLELLAND, LODGE & McTAGUE
Appellate Military Judges

Per curiam:

Appellant was tried by general court-martial composed of officer and enlisted members. Contrary to his pleas, Appellant was convicted of one specification of assault and battery, in violation of Article 128, Uniform Code of Military Justice (UCMJ); and one specification each of drunk and disorderly conduct and indecent language, in violation of Article 134, UCMJ. The court sentenced Appellant to reduction to E-1 and a bad-conduct discharge. The Convening Authority approved the sentence as adjudged.

Before this court, Appellant has assigned the following errors:

- I. The military judge erred when he denied the defense motion to dismiss Charges I and III for prior jeopardy.
- II. An unsuspended bad-conduct discharge is an inappropriately severe punishment for the crimes of which Appellant was convicted.
- III. Appellant's Fifth and Sixth Amendment rights were denied when he was prohibited from recording the Article 32 investigation, and by the subsequent denial of his motion for a new Article 32 investigation.

We exercise our Article 66, UCMJ authority and set aside the findings and sentence.

Background

Appellant was assigned to the Coast Guard Cutter THETIS. While on liberty in Barbados, Appellant engaged in activity that formed the basis for three specifications under two charges: Charge I, Article 80, UCMJ (Attempted Indecent Assault), and Charge III, Article 134, UCMJ (Drunkenness to the discredit of the armed forces and Indecent language).

The Barbados charges against Appellant revolved around his public intoxication, public vulgarity, and attempts at touching the groin area of a female Coast Guard member. Shortly after the Barbados incident, and prior to preferral of charges against Appellant, he was awarded punishment for the conduct at an Article 15, UCMJ non-judicial punishment proceeding (Captain's Mast). At the Captain's Mast, he was awarded thirty days restriction, thirty days extra duty, and reduction in grade (which was suspended for three months).

Subsequently, Appellant was charged with Rape, arising from alleged conduct following a party while in the THETIS's homeport of Key West, Florida. Following a contested trial, members found Appellant not guilty of the most serious charge of Rape, and found him guilty of only the Barbados criminal conduct for which he had already received punishment at Article 15 Captain's Mast.¹

¹ While he had been charged with a violation of Article 80, UCMJ, Attempted Indecent Assault, he was found guilty of the lesser included offense of Article 128, UCMJ, Assault Consummated by a Battery.

Discussion

Based upon a review of the entire record, a Court of Criminal Appeals must determine whether the findings of guilty should be approved, and whether the sentence approved by the convening authority should be approved or whether the court should approve only a part of the sentence. Article 66, UCMJ. “The breadth of the power granted to the Courts of Criminal Appeals to review a case for sentence appropriateness is one of the unique and longstanding features of the Uniform Code of Military Justice.” *United States v. Hutchison*, 57 MJ 231, 233 (2002). This broad power extends to findings as well as sentence. *See United States v. Tardif*, 57 M.J. 219, 223-24 (C.A.A.F. 2002); *United States v. Parker*, 36 M.J. 269, 271 (C.M.A. 1993); *United States v. Claxton*, 32 M.J. 159, 162 (C.M.A. 1991).

Considering the facts of this case, we decline to reach the merits of the three Assignments of Error. Instead, we exercise our Article 66, UCMJ authority and set aside the findings in this case. We believe Appellant was appropriately punished for the criminal conduct at Barbados by the CGC THETIS Commanding Officer at Article 15 Captain’s Mast. Preserving convictions of the same (or lesser) offenses by court-martial does not strike us as either necessary or attractive.

Decision

We have reviewed the record in accordance with Article 66, UCMJ. Upon such review, the findings and sentence are set aside. The charges and specifications are dismissed.



For the Court,

Amber K. Riffe
Deputy Clerk of the Court